

### **REMARKS**

This Amendment is in response to the Office Action mailed July 27, 2005. In the Office Action, claims 57, 66 and 67 were objected to based on an informality and claims 40, 51 and 60 were rejected under 35 U.S.C. §112 (first paragraph). Moreover, claims 37-39, 41-50, 52-59 and 61-69 were rejected under 35 U.S.C. §103(a). Applicants respectfully traverse the rejections in their entirety.

#### ***Request for Examiner's Interview***

The Examiner is respectfully requested to contact the undersigned attorney if after review, the pending claims are not considered to be in condition for allowance. This telephone conference would greatly facilitate the examination of the present application. The undersigned attorney can be reached at the telephone number listed below. Applicants conducted an Examiner's interview on November 2, 2006 to discuss the allowability of the claims based on the transmission error factor that is computed using a weighting factor as claimed. No resolution regarding allowability was reached. However, both parties noted that the divisional factor is also worthy of reconsideration, and thus, claim 37 has been amended for the Examiner's consideration and is directed to the adjustment of the fragmentation threshold based on a change in the transmission error factor using a divisional factor as defined in the subject application.

#### ***Claim Objections***

Claims 57, 66 and 67 are objected based on an antecedent basis informality. In response, claims 57, 66 and 67 have been corrected accordingly. Withdrawal of the outstanding objection of the claims is respectfully requested.

#### ***Rejection Under 35 U.S.C. §112***

Claims 40, 51 and 60 are rejected under 35 U.S.C. §112, first paragraph. Applicants have amended these claims to alter the limitation that the transmission error factor is a value based on certain (i) and (ii) set forth above. Support for this limitation may be found throughout the specification, such as on page 17, lines 27 *et seq.* of the subject application.

Withdrawal of the outstanding §112 rejection as applied to claims 40, 51 and 60 is respectfully requested.

#### ***Rejections Under 35 U.S.C. §103***

Claims 37-39, 41-45, 48-50, 52-55, 57-59, 61-64 and 66-69 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fischer (U.S. Patent No. 5,889,772) in view of Sindhushayana (U.S. Patent No. 6,064,678). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine*, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988). Herein, at a minimum, the combined teachings of the cited references fail to describe or suggest all of the claim limitations.

With respect to claim 37, Applicants respectfully submit that neither Fischer nor Sindhushayana, alone or in combination, suggests the limitation of *automatically adjusting the fragmentation threshold based on the transmission error factor by changing the fragmentation threshold by a divisional factor each time the fragmentation threshold is adjusted, the fragmentation threshold being based on a pre-determined fragmentation threshold divided by the divisional factor*. *Emphasis added*. Instead, Fischer describes a ratio between the number of failures to receive a response frame from each destination address after the protected frame was transmitted (DA\_BER\_fails\_count) to the number of transmission attempts protected by an existing outstanding airtime reservation for each destination address (DA\_BER\_attempts\_count). *See col. 11, lines 20-33 of Fischer*. There is no mention of any divisional factor as claimed. Therefore, Applicants respectfully request withdrawal of the outstanding §103(a) rejection as applied to claim 37.

With respect to independent claim 48, 57, 66 and 67, Applicants respectfully submit that neither Fischer nor Sindhushayana, alone or in combination, suggests the limitation of *the transmission error factor being a weighted value with transmission errors occurring successively having a different weighting than transmission errors experienced by the first group of data packets occurring sporadically*. *Emphasis added*.

Applicants respectfully submit that the Fischer does not disclose or suggest that the transmission error factor is a weighted value and “[a] burst of concentrated transmission errors would thereby increase the bit error rate more so than sporadic transmission errors.” *See page 6 of the Office Action*. For instance, Fischer teaches increments of the DA\_BER\_attempts and DA\_BER\_fails counters. The adjust unit (112) may calculate “a ratio of the DA\_BER\_fails count ... to the DA\_BER\_attempts count...” *See col. 12 lines 7-9 of Fischer*. This does NOT translate to an implied or implicit weighting of successive versus sporadic errors. As an illustration, consider for example that if 100 attempts were made and five failures occurred, being attempt numbers 96, 97, 98, 99 and 100, the ratio would be 5/100. In contrast if for a different set of 100 attempts there were also five failures, being attempt numbers 1, 27, 35, 62 and 92 the ratio would still be 5/100. Therefore, neither Fischer nor Sindhushayana discloses or suggests weighting successive versus sporadic errors differently as set forth in the independent claims 37, 48, 57, 66 and 67.

Further support of a non-differentiating approach is disclosed in Fischer may be found in the specification itself, which states “adjust unit 112 may calculate the average number of attempts...failures” wherein the emphasis on the word **average** conveys a smoothed, non-responsive, non-differentiating determination of the error factor. *See col. 11, lines 42-47 of Fischer*.

Claims 46-47, 56 and 65 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of Sindhushayana and Bird (U.S. Patent No. 6,657,954). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. However, based on the dependency of claims 46-47, 56 and 65 on independent claims 37, 48 and 57, believed by Applicants to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. Applicants reserve the right to present such arguments in an Appeal is warranted. Withdrawal of the §103(a) rejection as applied to claims 46-47, 56 and 65 is respectfully requested.

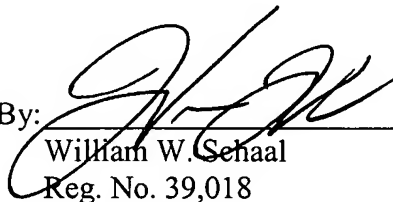
In conclusion, Applicants respectfully request the Examiner to reconsider the allowability of the claims based on a prior Examiner Interview and respectfully requests a telephone conference in the attempt to facilitate prosecution of the subject application.

Respectfully submitted,

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Dated: November 27, 2006

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11/27/2006

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